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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,367	07/01/2003	Tommy E. White	GP-302714	3163

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EXAMINER
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ENGLE, PATRICIA LYNN

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/611,367	Applicant(s) WHITE ET AL.	
	Examiner Patricia L Engle	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
     4a) Of the above claim(s) 21 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/9/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-22, drawn to a vehicle body panel, classified in class 296, subclass 193.11.
  - II. Claim 23, drawn to a method for manufacturing a vehicle panel, classified in class 29, subclass 897.32.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the panel can be made by another process, such as stamping.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention: Speices A- Figures 1-7 and Species B- Figure 8.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 8 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Kathryn Marra on May 7, 2004 a provisional election was made with traverse to prosecute the invention of Species A of the vehicle panel, claims 1-20 and 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21 and 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

Art Unit: 3612

application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Lieffring (US Patent 3,730,582).

Regarding claim 1, Lieffring discloses a body panel (19) for a vehicle, the body panel comprising: a unitary outer panel (19), the outer panel at least partially defining a hood portion (Fig. 2) of the body panel configured to extend over and across a front compartment of the vehicle, and two fender portions (in Fig. 2 and 7 the panel 19, extends down to form a portion of the side fender) of the body panel extending from opposite sides of the hood portion.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bailey et al. (US Patent 2,569,218).

Regarding claim 1, Bailey et al. disclose a body panel (18) for a vehicle, the body panel comprising: a unitary outer panel (18), the outer panel at least partially defining a hood portion (Fig. 2) of the body panel configured to extend over and across a front compartment of the vehicle, and two fender portions (in Fig. 1 the panel 18, extends down to form the side fenders) of the body panel extending from opposite sides of the hood portion.

*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 2-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey, Jr. in view of Hayata (US Patent 5,115,878).

Bailey, Jr. discloses the vehicle body panel of claim 1. Bailey, Jr. also discloses that the hood panel (18) abuts the front hinge pillars of the vehicle (claims 3 and 9), and that the hood panel (18) defines wheel wells (Fig. 2) (claims 4 and 10), that the hood panel includes a front bumper (31) (claim 11), that the hood panel conceals the front "bumper" (69 in Fig. 2) (claim 12), that the hood panel abuts rocker panels (claim 13), that the vehicle includes a cowl (near 21 in Fig. 1) and a front bumper (31) in which the hood panel abuts the cowl (Fig. 1) and extends

Art Unit: 3612

above the front bumper (Fig. 1) (claim 14), that the front portion of the vehicle does not include upper rails (claim 15), and that the vehicle does not include upper tie rails (claim 19)

Bailey, Jr. does not disclose that the hood panel includes an inner panel (claims 2, 8).

Hayata discloses a body hood panel with an outer member and an inner member (claims 2 and 8) wherein the inner panel includes strengthening formations (11, 13, 14) (claims 5 and 16) configured to absorb energy (abstract) (claim 6).

Bailey, Jr. and Hayata are analogous art because they are from the same field of endeavor, i.e., vehicle hoods.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include an inner panel with strengthening formations.

The motivation would have been to have a hood panel that could absorb impact energy in the event of a collision with an object that is taller than the bumper.

Therefore, it would have been obvious to combine Hayata with Bailey, Jr. to obtain the invention as specified in claims 2-6, 8-16 and 19.

Regarding claims 7 and 17, MPEP 2113 Product-by-Process Claims states that "If the product in the product-by-process claim is that same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." The hood panel is anticipated by Bailey, Jr. in view of Hayata. The process by which the hood panel is made is not a patentable distinction.

13. Claims 18, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Hayata as applied to claims 1-16 and 19 above, and further in view of Alamagny (US Patent 2,533,752).

Art Unit: 3612

Bailey, Jr. as modified discloses the hood panel of claims 1-16 and 19.

Bailey, Jr. as modified does not disclose that the hood panel is hingedly mounted to the front lower cross member.

Alamagny discloses a vehicle hood panel which is hingedly mounted along a lower front cross member.

Alamagny and Bailey, Jr. as modified are analogous art because they are from the same field of endeavor, i.e., vehicle hood panels.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to hingedly mount the hood panel of Bailey, Jr. as modified to the front lower cross member as it would merely involve the alternate utilization of an equivalent hinge mounting means to achieve the same exact function.

Therefore, it would have been obvious to combine Alamagny with Bailey, Jr. as modified to obtain the invention as specified in claims 18, 20 and 22.

### *Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art discloses other hood panels for vehicles.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:00.



Art Unit: 3612

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle

Examiner

Art Unit 3612

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May 7, 2004